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No. 517.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

GERRIT W. CLASON,
Appellant,

v.

STATE OF INDIANA,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA.

APPELLEE'S BRIEF.

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THE OPINION BELOW.

The opinion below, rendered by the Supreme Court of Indiana on November 1, 1938, is not yet officially reported. It is contained in this record at pages 24 to 29, and is reported in 17 Northeastern Reporter (second series) 92.

STATEMENT OF THE CASE.

This is an appeal from the judgment of the Supreme Court of Indiana (R. 24 to 29) affirming the judgment of the Elkhart Circuit Court wherein the defendant there, Gerrit W. Clason, was convicted of a violation of the provisions of Chapter 278 of the Acts of the General Assembly of Indiana of 1937 (p. 1279; 5 Burns' Indiana

Statutes, 1933 Ed., Secs. 16-817 to 16-836 of the Pocket Supplement; see Appendix A, pp. 39 to 60.)

The validity of this act, Chapter 278 of the Acts of the General Assembly of Indiana of 1937, had prior to this opinion of the Supreme Court of Indiana, been before that court, the question being between the same parties as in this appeal, i.e., Gerrit W. Clason and the State of Indiana. This cause was originally instigated by a prosecution by affidavit of the appellant, Gerrit W. Clason, for the unlawful hauling and transporting over a highway of the State of Indiana and into the State of Illinois, the body of a large dead animal in violation of Ch. 278 of the Acts of the General Assembly of Indiana of 1937. (Appendix "A".) The trial court, (the Elkhart Circuit Court of the County of Elkhart, State of Indiana) sustained a motion to quash the affidavit wherein the defendant raised the question of the constitutionality of the act under the Commerce Clause, Article I, Sec. 8, Clause 3, of the Federal Constitution. The state perfected an appeal to the Indiana Supreme Court upon the adverse ruling and the cause was reversed and remanded to the trial court by a decision of that court; 12 Northeastern Reporter (second series) 750, rehearing denied, 13 Northeastern Reporter (second series) 307. Appellant, Gerrit W. Clason, moved to quash the indictment upon substantially the same grounds as before, and after such motion was overruled he was found guilty by the trial court and fined in the sum of twenty-five ($25.00) dollars. Thereafter the appellant, Gerrit W. Clason, perfected an appeal to the Supreme Court of Indiana wherein the judgment of the trial court was sustained; from which judgment of the Supreme Court of Indiana, this appeal is prosecuted.

The precise question involved is whether a state may in the exercise of its police power, control the traffic over its

own highways of dead animals (not slaughtered for food) although the regulation—which is a sort of internal quarantine—requires the prompt disposition of the bodies within the state and does not permit the removal out of the state, away from state official supervision. In other words, may a state, under the circumstances, and by a reasonable exercise of the police power, *prohibit* an indiscriminate movement over its highways of the bodies of large dead animals not intended for human consumption, when such bodies are destined for shipment out of state, and at the same time *permit or suffer* a regulated and supervised internal traffic of such bodies to disposal plants when the vehicles used for local transportation and the disposal plants are under the supervision and control of state officials to thereby assure a disposal of such bodies with the least possible chance for the spread of animal diseases and the nuisances and inconveniences occasioned by such traffic and disposition?

The appellant asserts that the statute violates the Commerce Clause of the Federal Constitution. The statute so assailed requires a license for those who haul the dead animals, the conveyance used must meet certain requirements, there are conditions of cleansing and sanitation and disinfection—all to the one end of preventing the spread of disease and somewhat limiting necessary noxious conditions by placing the entire process of disposal of the bodies under control of the state.

The State of Indiana maintains that the statute is a reasonable exercise of its police power designed to control a dangerous article; that the handling and transportation of such dead bodies over the public highways is so noxious and fraught with such danger that the bodies cannot be regarded as legitimate articles of commerce; that the evils incident to the transportation of the dead

bodies cannot be controlled if indiscriminate hauling away from state supervision is allowed. If one effect of this plan of disposing of dead animal bodies encroaches on the rights of appellant to carry on interstate commerce, it does so only in a very incidental manner.

The statutes appertaining to the question, presented by this appeal are as follows:

Chapter 278 of the Indiana Acts of 1937 provides in part:

AN ACT to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect.

Carcasses of Dead Animals—Transportation and Disposal—Policy Declared.

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That it is hereby declared to be the public policy of the State of Indiana, acting through its general assembly, to control and regulate the transportation over the highways of this state and the disposal of the carcasses of dead animals, not slaughtered and intended for human food, to the end that the spread of animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such carcasses and from such transportation and disposal thereof, if the same be not required by law; and this act is designed to effectuate such purposes and public policy, through the exercise of the police powers of the state. This act shall be liberally construed to effect such policy and to promote such objects.

Disposal Plant—Operation—License for—Unlawful Acts.

SEC. 4. (a) No person shall engage in this state in the business of operating a disposal plant, as herein defined, without first obtaining for each such disposal plant so operated by him, or in his behalf, a license and any vehicle certificates required, as herein provided; and no person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, shall either transport over any highways of this state, or dispose of to any person, the bodies of any dead animals in any manner herein prescribed, or in any other manner not permitted by law.

State Veterinarian—Record.

(b) The said state veterinarian shall keep a record of all applications for permits, licenses and vehicle certificates, showing all thereof issued, denied, or revoked by him, and such other facts as he may prescribe.

Dead Animals—Hauling—License.

SEC. 11. (a) No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business.

Hauling—License—Qualification.

(b) No license shall be issued to any person solely for the purpose of transporting the bodies of

dead animals, but such transportation must be don solely by persons holding a license for disposal plants, so that such dead bodies may be properly and promptly disposed of under the requirement of this act; except that any public official of this state, charged by law with such duties, may remove or supervise the removal of any such dead bodies and the disposal thereof by any method provided for by this act where necessary to protect the public health and welfare.

Hauling—Vehicles Used in—Specifications.

(c) All vehicles used in the transportation of the bodies of dead animals, under the provisions of this act, shall have a tank or metal lining in the bed of such vehicle, or be otherwise so constructed that the same shall be practically watertight, so that no drippings or seepage from such dead bodies shall escape from such vehicles where this can be obviated; and all vehicles must have an end-gate constructed or lined with the same materials, and hinged at the bottom and fastened firmly at the top when closed and so designed, so far as practical, that drippings and seepings shall not escape from such part of said vehicle while engaged in such transportation; and every such vehicle shall have a bed of such depth and type of construction and equipment that any dead body or bodies therein shall be completely hidden from view of persons using the highways and any public nuisance obviated while being transported.

State Veterinarian—Additional Regulations—Authorization.

(d) The state veterinarian may prescribe specific and also additional requirements, not inconsistent with the provisions and purposes of this act, governing and regulating such transportation and the construction, equipment, maintenance and operation of such vehicles.

Vehicles—Cleansing—Disinfection.

(e) After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies.

Bodies of Diseased Animals—Hauling—Driver—Duty.

(f) Vehicles, when loaded with the body of an animal which has died of disease, shall be driven directly to the place of disposal, except that the driver may stop on the highway for other like dead bodies, but he shall not drive upon the premises of any person unless he first obtains the permission of such person and he shall avoid creating any nuisance during such transportation and in the event any drippings or seepage should escape from such vehicle, to his knowledge, he shall clean up the same and remedy such escape, if possible to do so.

Dead Animals—Bodies—Duty of Owners or Persons Caring for.

SEC. 12. No person owning or caring for any animal that has died from any cause shall allow the body to lie about his premises. Any such body shall be disposed of by such person within twenty-four hours after knowledge of such death, either to a person licensed under this act to dispose of it, as herein provided for disposal plants; or by the owner or person entitled to such body causing the

same to be buried within that time upon his own or any other available premises, where the transportation of said body along any highway of this state is not required. Any such burial shall be so done as not to produce a nuisance, and such body shall be buried to such a depth that no part thereof shall be nearer than four feet to the natural surface of the ground and every part of such body shall be covered with at least four feet of earth in addition to any other materials that may be used for that purpose. Provided, however, That any person so owning or controlling any dead animal, that has not died of a contagious disease, shall have the right to remove the hide or skin thereof on his own premises before burying such body as herein prescribed, but such skinning must be done and the disposition of such hide, or skin and body must be made in a manner that will avoid the creation of any nuisance. No body of any dead animal shall hereafter burned or cooked, or otherwise disposed of, except by burial as in this section provided, at any place in this state except at a disposal plant licensed as provided in this act; or as may be otherwise excepted by this act. Nothing contained in this act shall be so construed as to prevent any person residing outside of the corporate limits of any city or town, from disposing of the dead bodies of animals belonging to such person, by burning or burying such dead animals on the premises of such owner. Provided, further, That no person shall bury or burn the body of any dead animal within the corporate limits of any city or town, where the same is prohibited by law or ordinance.

The facts of this cause have been stipulated, and there is no argument or disagreement concerning any ultimate fact concerning the violation of the provisions of the act or the nature of the article dealt with or the facilities to cope with the problem of disposition.

SUMMARY OF ARGUMENT.

Proposition I.

THE PROVISIONS OF CHAPTER 278, ACTS OF 937 OF THE GENERAL ASSEMBLY OF INDIANA HAVE AS THEIR PURPOSE THE CONTROL AND REGULATION OF THE TRANSPORTATION AND DISPOSITION OF THE BODIES OF LARGE DEAD ANIMALS WITHIN THE STATE OF INDIANA, TO THE END THAT THE PUBLIC HEALTH AND WELFARE OF THE CITIZENS OF THE STATE SHALL BE PROTECTED AGAINST DANGERS, ANNOYANCES AND NUISANCES OCCASIONED THEREBY.

The legislature of the State of Indiana recognized the potential dangers attendant to the transportation and disposition of the bodies of large dead animals and pursuant thereto enacted measures to cope with the problem.

Secs. 1 to 23, ch. 278, Acts of 1937 of the General Assembly of Indiana;
Sec. 16-817 to 16-837, Burns' Indiana Statutes, 1933, Pocket Supp.

The Supreme Court of Indiana has held, not only in the judgment appealed from, but in two other decisions that the purpose of the act, as determined by its natural and reasonable effect, was to control and regulate a traffic in dangerous and noxious articles.

State v. Clason, 12 N. E. (2d) 750;
State v. Clason, 13 N. E. (2d) 307.

The provisions of Chapter 278, Acts of 1933 of the General Assembly of Indiana are a local police regulation and have a real relation to the purpose of the act, i.e., an adequate and suitable protection of the people of the State

of Indiana from the dangers occasioned and incident to the hauling and disposing of bodies of large dead animals.

Secs. 1 to 23, ch. 278, Acts of 1937 of the General Assembly of Indiana;
Sec. 16-817 to 16-837, Burns' Indiana Statutes, 1933, Pocket Supp.;
State v. Clason, 12 N. E. (2d) 750;
State v. Clason, 13 N. E. (2d) 307;
Clason v. State, 17 N. E. (2d) 92.

PROPOSITION II.

THE PROVISIONS OF CHAPTER 278, ACTS OF 1933 OF THE GENERAL ASSEMBLY OF INDIANA WERE ENACTED PURSUANT TO THE INHERENT POLICE POWER OF THE SOVEREIGN STATE OF INDIANA.

The power or authority of the State of Indiana to preserve and promote the welfare, health, morals, safety and peace of its citizens rests exclusively within the realm of state legislation under the division of powers under our dual form of government. This, the police power, enables the state to regulate or prohibit all internal things which are hurtful or detrimental to the community and society within its jurisdiction. Though such power is subject to limitations, it is sufficiently broad to empower legislation by the state to reasonably accomplish such ends.

Walker v. Jemeson, 140 Ind. 591;
Kidd v. Pearson, 128 N. S. 1;
New York, etc., R. R. v. New York, 165 U. S. 628;
Hennington v. Georgia, 163 U. S. 299;
Tiedeman, Limitation of Police Power, Sec. 1.

This broad power, though subject to limitation, rests olely within the discretion of the legislative branch of he state government and in the determination of what onditions warrant its exercise, the decision of the legis ature is conclusive.

Levey v. State, 161 Ind. 251;
Block v. Hirsh, 256 U. S. 135;
New York, etc., R. R. v. New York, 165 U. S. 628.

PROPOSITION III.

THE EXCLUSIVE POWER GRANTED CONGRESS BY SECTION 8, ARTICLE 1, CLAUSE 3, OF THE FEDERAL CONSTITUTION TO REGULATE COMMERCE, DOES NOT PREVENT THE STATE FROM LEGISLATING ON PURELY LOCAL MATTERS RELATING TO THE WELFARE, HEALTH AND SAFETY OF ITS CITIZENS IF SUCH EXPRESSIONS OF THE POLICE POWER ARE NOT INTENDED TO REGULATE INTERSTATE COMMERCE. THIS IS TRUE EVEN THOUGH SUCH ENACTMENTS MAY INCIDENTALLY OR INDIRECTLY AFFECT INTERSTATE COMMERCE.

As stated in the two foregoing propositions, the provisions of Chapter 278 of the Acts of the General Assembly of Indiana of 1937, have as their purpose the preservation of the health, safety and property of the citizens of Indiana, and as such is a legitimate exercise of the inherent police power of the State. The police power of the State is subject to few limitations when such power is properly and reasonably exercised in the preservation of the interests of the State. Sec. 8, Art. 1, clause 3, of the Federal Constitution is a limitation of the power of the States to regulate commerce and only incidentally limits

the exercise of the police power of the state when such exercise of the police power is in purpose and effect a regulation of interstate commerce. An exercise of the police power which has as its purpose the legitimate functions of the police power is not subject to the commerce clause limitation unless it directly burdens the free flow of interstate commerce. The act here in question was intended to be, and is a regulation of an internal matter and was not aimed at interstate commerce, and the fact that it may incidentally or indirectly affect such commerce, is of no consequence in determining its constitutionality.

Hennington v. Georgia, 163 U. S. 299;
Kidd v. Pearson, 128 U. S. 1;
Block v. Hirsh, 256 U. S. 135;
Capital City Dairy Co., v. Ohio, 183 U. S. 238, 245;
Washington-Oregon Co., v. Washington, 270 U. S. 87;
Plumley v. Mass., 155 U. S. 461;
Hygrade Provision Co., v. Sherman, 266 U. S. 497.

The provisions of the act in question are similar in all respects and in no wise more directly affect interstate commerce than do quarantine measures of the various states. Quarantine measures have been upheld by this court when their purpose was to effectuate a reasonable exercise of the police power.

Clason v. State, 17 N. E. (2d) 92;
State v. Clason, 12 N. E. (2d) 750;
State v. Clason, 13 N. E. (2d) 307;
Sligh v. Kirkwood, 237 U. S. 52;
Reid v. Colorado, 187 U. S. 137;
Silz v. Hesterburg, 211 U. S. 31;
Powell v. Pennsylvania, 127 U. S. 678;
Compagnie Francaise v. La. Board of Health, 186 U. S. 380.

The extent of the police power is sufficiently broad to enable a state to exclude from its borders an article once considered a legitimate article of commerce if in the opinion of the state legislature, such articles may be injurious to the health, welfare, property or morals of its citizens, and such exclusion is not such a burden upon interstate commerce as to invalidate the action under the limitation of Art. 1, Sec. 8, Clause 3, of the Federal Constitution.

Oregon-Washington R. & Nav. Co., v. Washington, 270 U. S. 87;
Powell v. Pennsylvania, 127 U. S. 678;
Plumley v. Mass., 155 U. S. 461;
Austin v. Tennessee, 179 U. S. 343.

PROPOSITION IV.

CHAPTER 278, ACTS OF 1937 OF THE GENERAL ASSEMBLY OF INDIANA IS UPON ITS FACE AN EXERCISE OF THE STATE'S INHERENT POLICE POWER, AND IN DETERMINING WHETHER SUCH STATUTE IS A DIRECT OR UNWARRANTED BURDEN UPON INTERSTATE COMMERCE, THE TEST OF REASONABLENESS MUST BE APPLIED. TO DETERMINE WHETHER THE EXECUTION OF THE PROVISIONS OF THE STATUTE CONSTITUTES MORE THAN AN INDIRECT OR INCIDENTAL BURDEN ON INTERSTATE COMMERCE, THIS COURT MUST CONSIDER THE OBJECTS AND NECESSITY OF THE ACT AND WHETHER IN THE LIGHT OF THE CIRCUMSTANCES, THE PROVISIONS OF THE STATUTE ARE UNREASONABLE. IF THE PROVISIONS AND EFFECT OF THE STATUTE ARE NOT UNREASONABLE, THE STATUTE IS NOT AN UNWARRANTED OR PROHIBITED REG-

ULATION OF INTERSTATE COMMERCE IN THE CONSTITUTIONAL SENSE.

The provisions of the act in question provide for a licensed and regulated hauling and disposition of the bodies of large dead animals. The police power of the state is sufficiently broad to enable the state to protect its citizens and their property from dangers and annoyances occurring within the state, especially when such danger and annoyance is occasioned by the use of the highways of the state in an adverse manner. The exercise of the police power, to accomplish the desired result for the protection of the property and citizens of the state, requires the prohibition of the indiscriminate movement of vehicles over the state's highways to places without the state and beyond the jurisdiction of the officials of the state. Such exercise of the police power is a reasonable one considering all the circumstances by which the interests of the state are protected. The test of reasonableness is likewise applicable even though such regulation or prohibition of an internal traffic may incidentally affect interstate commerce.

Lake Shore & Mich. Southern Ry. v. Ohio, 173 U. S. 285:
Smith v. St. Louis, etc., Ry., 181 U. S. 248:
Compagnie Francaise, etc., v. State Board, 186 U. S. 380:
Atlantic Coast Line R. v. Wharton, 270 U. S. 328:
Mo. Pac. Ry. v. Kansas, 216 U. S. 362:
Yazoo & Miss. Valley R. v. Greenwood, 227 U. S. 1:
Hygrade Provision Co. v. Sherman, 266 U. S. 497:
Gulf, C. & S. F. R. v. Texas, 246 U. S. 58:
Chicago R. I. & P. R. v. Arkansas, 219 U. S. 453:
South Covington, etc., Ry. v. Kentucky, 252 U. S. 399.

Applying the test of reasonableness to the case at hand, as the test of reasonableness is applied in "due process" cases, it is beyond question that the paramount purpose of the statute must prevail over some indirect or incidental effect the enforcement of the act may have on interstate commerce. That is, balancing the interests of the state, its problem of coping with the protection of its citizens from the dangers and annoyance occasioned in the disposal of the bodies of dead animals, against the interests of those few affected by the act, the provisions of the act are not of such an unreasonable character as to constitute the act a regulation of interstate commerce as prohibited by the federal constitution.

Proposition V.

THE RECORD OF THIS CAUSE DISCLOSES SUFFICIENT FACTS TO SUBSTANTIATE THE FINDINGS OF THE TRIAL COURT AND THE JUDGMENT OF THE SUPREME COURT OF INDIANA THAT THE PROVISIONS OF THE ACT ARE AN EXERCISE OF THE POLICE POWER OF THE STATE AND DID NOT WORK AN UNREASONABLE BURDEN UPON INTERSTATE COMMERCE.

The stipulation of facts in this cause (R. 17 to 21) conclusively show that the transportation of dead animals over the highways of the state is fraught with danger and further, that the bodies of such dead animals are a source and cause of the spreading of diseases to both humans and animals. This in itself is sufficient to sustain the reasonableness of a statutory mode of disposition of such bodies, and the further showings of the stipulations, that disposition in the manner prescribed under this act will lessen the dangers and annoyances, completely establishes the reasonableness of the operation of this act, even though it may indirectly affect interstate commerce.

ARGUMENT

I.

THE PURPOSE OF THE STATUTE IS TO PROTECT THE HEALTH AND WELFARE OF THE CITIZENS OF THE STATE

Indiana is an agricultural state. It has over 6,000,000 farm animals, horses, cattle, sheep, hogs. It is one of the three big corn producing states and for that reason the raising of hogs is an important source of income.[1] The state has enacted many laws looking toward the protection of its live stock industry, and the conservation of the state income from that source. The act "to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals" is simply one of those laws.

We pass over the offensive conditions which usually accompanies the transportation of dead bodies of large animals over the public highways, the noxious odors, the unsightly appearance, etc. The greater harm from the transportation comes from the spread of disease to the healthy live animals. In paragraph 6 of the stipulated evidence, it is stated that a majority of large animals die from contagious or infectious diseases, some of which may be transmissible to man as well as other animals. (Rec. P. 19, Stip. 6). One animal disease that gives great concern to agricultural interests of Indiana is that of hog cholera. Farmers in driving a drove of hogs from farm to farm have a right to assume that the public highways of the state will not be a source of infection, yet if the body of a hog that died with the infectious disease is improperly transported along the public roads, the drip

[1] The World Almanac, 1939, pp. 343-345.

ping from the conveyance—or the hoofs of the draft animals—may carry the disease to other animals traveling on the roadway. If healthy animals are to be transported by wagon or truck, the farmer has a right to assume that no infected dead animal was carried on the same conveyance and the conveyance left unsterilized.

No record is kept of the disease that causes the death of farm animals—every dead body is a possible carrier of disease to healthy animals. The Indiana statute, which is challenged in the appeal, provides for the burial within 24 hours after death of animals. The conditions of burial are specified. The hide may be removed if the disease was known not to be infectious. If the body is conveyed off the premises this must be by one licensed by the state to transport the body. The shortest route to the "disposal plant" must be followed—the conveyance must be reasonably tight so as to permit no dripping on the highway (Appendix "A," Sec. 11 (c)). Thirty-eight disposal plants are under control of the state veterinarian. (Rec. P. 20, Stip. 9). Certain precautions are to be observed at all the disposal plants. It is not permissible for a truck or wagon to leave the plant until the truck or wagon and the horses drawing the wagon are cleaned and disinfected so that no infection will be carried back on to the public highways. This provision is the very heart of the statutes. The Supreme Court of Indiana noted this feature of the law and said of the provisions that it might be

> "considered as in the nature of a quarantine against bringing into the state contaminated vehicles that have been used in the transportation of dead animals".

and the court added,

> "we believe that such a quarantine is justifiable and reasonable."

The State Supreme Court understood of course that the state had no control over the vehicles or disposal plants out of the state. The only practical thing left to do was to set up a plan which would keep the state in control of the dead animal and indirectly the conveyance from the beginning of the transportation to its final disposition under the supervision of the state veterinarian's office. That is a part of the state's plan to stamp out animal diseases. Unless the public highways and the vehicles using them in going from farm to farm are kept free from germs of animal diseases, communicable diseases can never be eradicated.

II.

THE STATUTE WAS ENACTED PURSUANT TO THE INHERENT POLICE POWER OF THE STATE

In considering the scope of the police power of the state it is safe to say that no activity is exempt from its purview, whether it be one of long duration or of recent occurrence; in either case such activities are subject to regulation or prohibition if the legislature in a reasonable exercise of its discretion decides that the prohibition or regulation of such activities are necessary to promote the peace, safety, health or welfare of the public. The basis of reasonableness in such cases is ultimately determined by facts under a similar test as that applied in cases determining the question of due process of law. Quarantine laws and regulations dealing with the disposition or prohibition of unhealthy, noxious or deleterious articles have always depended upon the reasonableness of the object to be accomplished and it has been repeatedly held by the courts of this and other jurisdictions that the rights of the individual, even to the property he has in such objects are subservient to the public wel-

"It is the duty of every government, whether state or municipal, to pass laws or ordinances for preserving the public health, protecting the good order and peace of society, and providing for the abatement of nuisances. Such laws, if they contain nothing more than the necessary restrictions and limitations for the accomplishment of such purposes, are not unconstitutional on the ground that they deprive persons of their property without due process of law. Quarantine regulations for instance, materially interfere with the free and unobstructed use of private property, and for the time being restrain, to a certain extent, the liberty of individuals. Yet the health, safety, and welfare of the community often demand their enforcement; and such laws have always been upheld as necessary police regulations. Several other instances might be cited where laws of a similar character are sustained; but the authorities are too numerous, and the general principles of law too well settled, to require any extended reference or review. No person has an inalienable right to produce disease, or trade in that which is noxious; and in every community, large or small, some minor rights of individuals must be surrendered for the benefit, protection, health, and general good of all. In Alpers v. City and County of San Francisco, 32 Fed. Rep. 503, the constitutionality of this 'dead animal contract' was involved; and it was sustained and declared valid as a legitimate exercise of the police power of the state. Field, J., in delivering the opinion of the court said:

"'There is no doubt that the contract between the plaintiff and the city and county of San Francisco is one within the competency of the municipality to make. It is within the power of all such bodies to provide for the health of their inhabitants by causing the removal from their limits of all dead animals not slain for human food, which otherwise would soon decay, and, by cor-

rupting the air, engender disease. Any provisio
for such removal may be made by contract, as w
as the performance of any other duty touchin
the health and comfort of the city; its authoritie
always preserving such control over the matter a
to secure an observance of proper sanitary reg
lations. In addition to this general power, th
constitution of the state of California which w
in force when the contract with the plaintiff w
renewed, declares that "any county, city, or tow
ship may make and enforce within its limits
such local police, sanitary, and other regulations
are not in conflict with general laws." Article
Sec. 11. And the consolidation act of 1863, still
force, provides that the board of supervisors sh
have power "to authorize the summary abateme
of nuisances; to make all regulations which may
necessary or expedient for the preservation of
public health, and the prevention of contagious d
eases; to provide by regulation for the prevent
and summary removal of all nuisances and
structions in the streets, alleys, highways, a
public grounds of said city and county; and
prevent the running at large of dogs, and to
thorize the destruction of the same when at lar
contrary to ordinance.'' '',

National Fertilizer Co. v. Lambert et al.,
Fed. Rep. 458, 461.

The same broad interpretation of the scope of
police power was accepted by the court in the case
Walker v. Jameson, 140 Ind. 591, 596, wherein the co
said:

"It is within the general power of a governm
to preserve and promote the public welfare e
at the expense of private rights. 18 Am. and E
Encyc., etc., 739, 740. Police power is defined
New Orleans Gas Light Co. v. Hart, 40 La. 47

Am. St. Rep. 374, where it is said: It is the right 'of a state functionary to prescribe regulations for the good order, peace, protection, comfort and convenience of the community which do not encroach on the like power vested in congress by the federal constitution.'

"In Commonwealth v. Alger, 7 Cush. (Mass.) 53, the court lays down the rule that 'rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonble restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient.'

"In Town of Lake View v. Rose Hill Cemetery Co., 70 Ill. 191, the court says: 'The police power of the state is coextensive with self-protection, and is applicably termed the law of overruling necessity. It is the inherent and plenary power in the state, which enables it to prohibit all things hurtful to the comfort and welfare of society.' Hale v. Lawrence, 21 N. J. Law 714; Tiedeman's Lim. of Police Power, Section 1."

The power of the state under the police power to regulate or prohibit internal activities which endanger public health and welfare is not limited to activities local in scope. Early in the history of our dual form of government, the question of the exercise of this power over interstate commerce arose. The courts have unhesitatingly decreed that a reasonable exercise of the police power by the state is valid even though it affects interstate commerce. The quarantine laws of the states are an example of this power, wherein it has been determined that the states may *absolutely prohibit* the introduction into the state of harmful or deleterious articles. These

cases reason that such articles are no longer legitimate articles of commerce, and where the facts reasonably show that the health, welfare, property or morals of the citizens of the state will be protected by the exclusion of such, the effects of such prohibition upon the interstate commerce are not of such a burdensome nature as to constitute a regulation of commerce by the state as is prohibited by the Federal Constitution.

Powell v. Pennsylvania, 127 U. S. 678;
Austin v. Tennessee, 179 U. S. 343;
Plumley v. Mass., 155 U. S. 461;
Rasmussen v. Idaho, 181 U. S. 198;
Sligh v. Kirkwood, 237 U. S. 52.

This question of regulation is discussed as follows in Gavit's *The Commerce Clause*, (page 161):

"Although the court has used the word 'regulation,' when applied to state action, it is not the counterpart of 'regulation', when used in connection with congressional action. It has a broader significance; it may include, as we may see, any interference by a state, in any of its capacities.

"That result is in truth wholly inescapable once the immediately exclusive or paramount character of the congressional jurisdiction is posited. As pointed out above, it is necessary to give to the word 'regulation', when applied to state action, a legal content. State pilotage and quarantine laws are, for example, regulations in fact of those engaged in interstate commerce; they may be valid however, because they are not regulations 'in the constitutional sense.' That is, the validity of state action depends, after all, on something more than the mere determination that there is or is not interstate commerce with which the state is dealing. The solution of the case depends on whether or not it is a lawful 'regulation'. The proper method

of settling that question is to apply a test of reasonableness."

At page 186 the question is again discussed as follows:

"The truth is that under the present theory the state lays down almost innumerable rules governing the conduct and interests of those engaged in interstate commerce. The question is, is it a valid regulation? Most of the tests and reasons given by the court must be cast aside. The assertion 'that 'this is not a regulation of interstate commerce but an exercise of the police power' is at best a result and neither a reason nor a rule. The suggestions that the state action is either constitutional or unconstitutional depending upon an imperceptible quality in the 'silence of Congress' is the most facetious argument to which the Supreme Court has ever stooped. Congress by its action cannot enlarge or interpret the Constitution. Certainly its silence has no greater efficacy.

"The tests suggested by some of the cases: is this a direct or substantial burden on interstate commerce; is it an unlawful interference; and all other similar inquiries are misleading and for the most part unusable. They deal with causations and connections, with which it is impossible to deal satisfactorily.

"The truth is that what is done in any given case is that the interest of those engaged in interstate commerce are weighed against the local interests embodied in the state action. The test ought to be that employed in the due process cases; under all of the circumstances; weighing the local interests against the interests of those engaged in interstate commerce, is the state action reasonably justified? Such a test takes the inquiry out of the darkness of causes, connections, and silence, into the light of an intelligent decision and where in truth the parties are in a position to produce some evidence for or against the validity of state action. As has been shown heretofore, there is

> some indication in some of the more recent cases that the court has employed some such test. As has been suggested heretofore, a decision of a case under the Commerce Clause is pretty much 'on information and belief,' but mostly the latter. The test of *reasonableness* would make it possible to employ a method of decision which could better utilize available information." (Our italics.)

The foregoing adequately shows that the police power of the state is sufficiently broad to *prohibit* or *regulate* activities touching interstate commerce when such is reasonably necessary for the preservation of the interests of the state and its people. These doctrines have been repeatedly expounded when courts have considered the question of the interference with interstate commerce of quarantine prohibitions or internal regulations, but have not been so fully dealt with when the prohibition is against the introduction of harmful, deleterious or diseased articles into commerce. Such is the precise question we have at hand, coupled with the regulation of the internal traffic in such articles. The legal and factual reasons which prohibit their introduction into the state are just as applicable and the exigencies of the circumstances just as urgent when the harmful or deleterious article destined for interstate commerce is introduced into such commerce within the state. Such exportation necessarily requires the passage of such articles and their attendant dangers through some part of the state, thereby exposing the citizens and their property to dangers and nuisances which the state could *prohibit* if the dangers arose in a converse manner, that is, the introduction of such articles into the state. As concerns the introduction of such articles, it is not a regulation of interstate commerce to prohibit that introduction, and appellee submits, it is likewise not an illegal or unwarranted regulation of in-

terstate commerce to prohibit the transportation of such articles out of the state when such transportation is over the highways of the state, even though a like transportation is permitted within the state for limited purposes only, such as in the case at hand, a quick disposition of such articles by licensed, regulated, and inspected haulers and disposal plants.

Though no exacting authority has been offered for the preceding statements, precisely the same question was presented to the Supreme Court in the case of Sligh v. Kirkwood, wherein the State of Florida *prohibited* the exportation of unripe citrus fruit from the state. The court sustained this action on the ground that such articles were not *legitimate articles of commerce* and interstate commerce was not regulated by state's action in *prohibiting* their exportation. The court in sustaining this exercise of the police power said:

> "' * * * Whether it is a valid exercise of the police power is the question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. . . . And further, "It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government." ' Eubank v. Richmond, 226 U. S. 137, 57 L. Ed. 156, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76 Ann. Cas. 1914B, 192.
>
> "The power of the state to prescribe regulations which shall prevent the production within its borders of impure foods, unfit for use, and such articles as would spread disease and pestilence, is well established. Such articles, it has been declared by this court, *are not the legitimate subject of*

trade or commerce, nor within the protection of the commerce clause of the Constitution. 'Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution.' Bowman v. Chicago & N. W. R. Co., 125 U. S. 465, 489, 31 L. ed. 700, 708, 1 Inters. Comm. Rep. 823, 8 Sup. Ct. Rep. 689, 1062." (Our italics.)

III.

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION DOES NOT PREVENT THE STATES FROM LEGISLATING ON PURELY LOCAL MATTERS RELATING TO THE WELFARE, HEALTH AND SAFETY OF ITS CITIZENS, EVEN IN THOSE MATTERS WHERE INTERSTATE AND FOREIGN COMMERCE IS AFFECTED. THIS IS ESPECIALLY TRUE WHERE CONGRESS HAS NOT OCCUPIED THE FIELD COVERED BY THE STATE LAW

In the Minnesota rate case, 230 U. S. 352 on page 402 the court discusses the limitations between the powers of a state over its internal affairs and the authority of Congress. Speaking of the permissive exercise of power appropriate to a state although interstate commerce may be affected, the court says:

"But within these limitations there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is

impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the Government because of the necessity that they should not remain unregulated and that their regulation should be adapted to varying local exigencies; hence, the absence of regulation by Congress in such matters has not imported that there should be no restriction but rather that the States should continue to supply the needed rules until Congress should decide to supercede them. Further, it is competent for a State to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safetly, morals and welfare of its people, although interstate commerce may incidentally or indirectly be involved. Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power."

The court then gives illustrations where Congress had recognized the propriety of local action and on page 406 the court further says:

"Quarantine regulations are essential measures of protection which the States are free to adopt

when they do not come into conflict with Federal action. In view of the need of conforming such measures to local conditions, Congress from the beginning has been content to leave the matter, for the most part, notwithstanding its vast importance, to the States and has repeatedly acquiesced in the enforcement of state laws. (Act of February 25, 1799, c. XII, 1 Stat. 619, R. S., Sec. 4797; Act of April 29, 1878, c. 66, 20 Stat. 37; Act of February 15, 1893, c. 114, 27 Stat. 449.) Such laws undoubtedly operate upon interstate and foreign commerce. They could not be effective otherwise. They cannot, of course, be made the cover for discriminations and arbitrary enactments having no reasonable relation to health (Hannibal & St. J. Railroad Co. v. Husen, 95 U. S. 465, 472, 473); but the power of the State to take steps to prevent the introduction or spread of disease, although interstate and foreign commerce are involved (subject to the paramount authority of Congress if it decides to assume control), is beyond question."

IV.

IN DETERMINING WHETHER A STATE STATUTE IS AN UNCONSTITUTIONAL BURDEN ON INTERSTATE COMMERCE THE PROPER TEST TO BE APPLIED IS THAT OF HE REASONABLENESS OF THE STATUTE

In its inquiry as to the reasonableness of a statute, the courts will consider the object and the necessity of the law and whether, in the light of all of the circumstances, the provisions of the statute are clearly unreasonable. If the provisions are reasonable, the statute is not an unwarranted regulation of interstate commerce in the constitutional sense.

In "The Commerce Clause," Gavit, Section 12, the author observes that this court has laid down no standard

as to when a state action was or was not an invalid regulation of interstate commerce. The author then states that recent cases suggest the "test of reasonableness." The author says:

> "For example, Justice Harland said this:[1]
>
> 'We know from the face of the statute that it has a real, substantial relation to an object as to which the state is competent to legislate, namely, the personal security of those who are passengers on cars used within its limits.'
>
> And a short time later[2] in a case involving the stoppage of interstate trains the same Justice talks throughout the entire opinion about the state action being a reasonable regulation under the circumstances. In *Smith v. St. Louis, etc., Ry.*[3] Justice McKenna upheld a state quarantine law because it was a 'reasonable precaution.'
>
> "In the more recent cases involving the validity of a license tax against a telephone or telegraph company for the use of the streets, and for the cost of inspection, the decision has generally turned on whether or not the charge was 'reasonable'.[4] And also in the more recent cases involvinng the validity of a state regulation as to the stoppage or furnishing of trains or cars, the court has talked about the 'reasonable necessity' for the regulation.[5]
>
> "The case of *Chicago, R. I. & P. R. v. Arkansas*[6] is decided indiscriminately under the Fourteenth Amendment and the Commerce Clause, and in it Justice Harlan says this,[7]

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[1] In New York, N. H., etc., R. v. New York, 165 U. S. 628, 632 (1897).
[2] In Lake Shore M. S. R. v. Ohio, 173 U. S. 285 (1899).
[3] 181 U. S. 248 (1901).
[4] Atlantic & P. T. Co. v. Philadelphia, 190 U. S. 160 (1903).
[5] Atlantic Coast Line R. v. Wharton, 207 U. S. 328 (1907).
[6] 219 U. S. 453 (1911).
[7] At p. 466.

'Under the evidence, there is admittedly some room for controversy as to whether the statute is or was necessary; but it cannot be said that it is so unreasonable as to justify the court in adjudging that it is merely an arbitrary exercise of power and not germane to the objects which evidently the state legislature had in view.'

"In Savage v. Jones,[5] in upholding a state food inspection act Justice Hughes said,

'The evident purpose is to prevent fraud * * *. Its requirements are directed to that end, and they are not unreasonable.'

And in *Sioux Remedy Co. v. Cope*[1] Justice Van Devanter held invalid conditions imposed upon the right to sue for the price of goods sold in interstate commerce because

'They have no natural or reasonable relation to the right to sue which they are intended to restrict.'

While in sustaining the validity of a state automobile license as against a non-residence, Justice McReynolds said,[2]

'The reasonableness of the state's action is always subject to inquiry insofar as it affects interstate commerce.'

In *Public U. C. v. Landon*[3] *the same* Justice said,

'The receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state.'

Again in *South Covington, etc., Ry. v. Kentucky*,[4] he sustained a Jim-Crow Statute because its effect

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[5] 225 U. S. 501, 524 (1912).
[1] 235 U. S. 197, 205 (1914).
[2] In Hendrick v. Md., 235 U. S. 610, 622 (1915).
[3] 249 U. S. 236, 245 (1919).
[4] 252 U. S. 399, 404 (1920).

on interstate commerce was only 'incidental' and not 'unreasonable'.

"In *Davis v. Farmers Coop. Eq. Co.*,[5] Justice Brandeis said of a statute imposing judicial jurisdiction over a foreign corporation common carrier,

> 'By requiring from interstate commerce general submission to suit, it unreasonably obstructs and unduly burdens, interstate commerce.'

And in *Hygrade Provision Co. v. Sherman*,[6] Justice Sutherland said this:

> 'It is enough to say that the statutes now assailed are not aimed at interstate commerce, do not impose a direct burden upon such commerce, make no discrimination against it, are fairly within the range of the police power of the state, bear a reasonable relation to the legitimate purpose of the enactment, and do not conflict with any congressional legislation. Under the circumstances they are not invalid because they may incidentally affect interstate commerce.

"There is therefore some support in the language of the cases for the proposition that after all the test here is whether or not state action under all the circumstances is reasonable. The court is really engaged in weighing the reasonable necessity for state regulation of action which takes place within the confines of the state, as against its reasonable or unreasonable effect on interstate commerce."

Dead animal bodies are not a legitimate article of commerce. They may under some circumstances have a value. The owner may remove and sell the hide. That is provided for in the statute (Appendix "A" Sec. 12). Value is a relative word. In this case, the appellant bought an article which he knew he had no right to transport over the

[5] 262 U. S. 312, 317 (1923).
[6] 266 U. S. 497, 503 (1925).

public roads or reduce to his possession. Such dead bodies decompose quickly. (Rec. P. 19, Stip. 5.) If any property rights exist in such a thing, they are so hedged around with regulations that they have no recognized measure of value. It is not a commodity that may be transported by rail. The law takes note of it only to see that it is straightway disposed of or otherwise abated. There is no established course of business in commerce between the states in such a thing.

Under the police power the state may deprive any owner of any property, even without any compensation, where essential to the public welfare. All control and use of any property by an owner thereof or of his agent is impressed with the dominant police power of the state at all times and all places.

In one of the late Justice Cardozo's opinions (Baldwin v. Seeling, 294 U. S. 511), he was discussing a New York law which interfered with the sale of milk (wholesome milk) from another state. The opinion ruled that the statute placed an inllegal embargo on milk carried in interstate commerce, but in the course of his opinion the learned Justice said, (we omit the citations):

> "Subject to the paramount power of Congress, a state may regulate the importation of unhealthy swine or cattle. Things *such are not proper subjects of commerce*, and there is no unreasonable interference when they are inspected and excluded. So a state may protect its inhabitants against fraudulent substitution, by deceptive coloring or otherwise, of one article for another. It may give protection to travelers against the danger of overcrowded hghways and protection to its residents against unnecessary noises. None of these statutes —inspection laws, game laws, laws intended to curb fraud or exterminate disease—approach in

drastic quality the statute here in controversy which would neutralize the economic consequence of free trade among the states."

We cannot believe that the commerce clause of the Federal Constitution was ever designed to permit the transportation of the body of a dead animal out of a state upon the theory that it was a commodity entitled to move in legitimate commerce and to that extent was not amenable to the police power of a state.

In this case it is important to note that the statute should be considered along with the authority of the State of Indiana over its highways.

A state owns, maintains, and has a right to control its public highways.

Stevenson v. Binford, 287 U. S. 251, 264.
Kelly v. Finney, 207 Ind. 567.

It may condition or exclude motor carriers for hire from the roads, even those moving in legitimate interstate commerce. In the case of Bradley v. Public Service Commission of Ohio, 289 U. S. 92, the question at issue was the right of a state to protect its highways and those using them in the usual way from truck traffic over highways already conjested. The case of Buck v. Kuykendall, 267 U. S. 307, from the State of Washington, was relied upon by an interstate truck operator, but this court distinguished the Buck case by ruling that the primary purpose of that law which would have excluded interstate motor carriers from the State of Washington was not the promotion of safety but that the law was designed to favor intrastate vehicles as against interstate competition. As to that situation, this court in the Bradley case declared:

> "In dealing with the problem of safety of the highways as in other problems of motor transportation, the State may adopt measures which favor vehicles used solely in the business of their owners as distinguished from those which are operated for hire by carriers who use the highways as their place of business."

The court there held that the state commission might deny an interstate as well as an intrastate carrier the right to travel over its highways if such denial had for its purpose the safety of the highways and those entitled to use them.

More recently in the case of South Carolina, etc., v. Barnwell Bros., 58 S. Ct. 510, it was held that the state regulatory measures providing for the weight and size of vehicles that move over the highways were within the legislative power of the state. In that case this court said:

> "From the beginning it has been recognized that a State can, if it sees fit, build and maintain its own highways, canals, and railroads, and that in the absence of congressional action, their regulation is peculiarly within its competence, even though interstate commerce is materially affected. Minnesota rate cases; Simpson v. Shephard, 230 U. S. 352, 416. Congress not acting, state regulation of intrastate carriers has been upheld regardless of its effect upon interstate commerce. With respect to the extent and volume of the local interests to be protected, and the unavoidable effect upon interstate and intrastate alike, regulation of the use of the highways are akin to local regulation of rivers, harbors, piers, and docks, quarantine regulations and game laws, which, Congress not acting, have been sustained, even though they materially interfere with interstate commerce."

The State of Indiana maintains that it was within the power of its Legislature to enact a law which would regulate and control the traffic over its highways of the bodies of dead animals not intended for food even though the law required the disposal of the body within the State and operated to prevent the transportation of the body into another state.

V.

THE RECORD OF THIS APPEAL CONTAINS FACTS SUFFICIENT TO SUSTAIN THE FINDING OF THE TRIAL COURT AND THE DECISION OF THE STATE SUPREME COURT. THE FACTS SHOW THAT THE PROVISIONS OF THE STATUTE WERE ENACTED UNDER THE POLICE POWER OF THE STATE AND THAT THE STATUTE IN ITS APPLICATION DOES NOT WORK AN UNREASONABLE BURDEN UPON INTERSTATE COMMERCE

The stipulated facts are that the appellant was transporting a dead animal not slaughtered for food over the public highways of Indiana destined for the State of Illinois. He had no license or permit or other authority to transport such body as required by the statute. It is stipulated that decomposition comes quickly to such bodies and unless they are disposed of, noxious odors will be produced. (Rec. P. 18, Stip. 1 to 6); that a majority of animals die from a contagious or infectious disease some of which are transmissible to man (Rec. P. 19, Stip. 6). Such diseases and hog cholera may be spread through drippings from vehicles used to transport the body. The germs sporulate and survive for a long period under certain conditions. (Rec. P. 19, Stip. 7). When the transportation is properly done and the vehicles are sterilized, the spread

of disease and also the carrying of disease by flies is mi
mized. (Rec. P. 20, Stip. 8).

The state has licensed 38 disposal plants which are di
tributed over the state so that all bodies may be prompt
disposed of under state supervision. (Rec. P. 20. Stip. 9

CONCLUSION

The State of Indiana maintains that the statute challenged in this appeal is a reasonable police regulation intended to correct a serious evil that can not be dealt with in a less drastic way. The law bears a reasonable relation to its declared purpose, that is to prevent the spread of animal diseases and to protect public health and property. There is in this case no question of due process or the confiscation of property.

The single question presented is whether or not the statute in its operation violates the commerce clause of the Federal Constitution to the injury of appellant Clason.

The statute has to do with a thing that can hardly be called a legitimate subject of commerce. We believe that it meets the test of reasonableness when its possible effect on interstate commerce is considered. The surveillance of its highways has always been regarded as a matter within the exclusive province of the state government. The states, in a sense, guarantee to those using the highways that they are reasonably safe whether the user is driving a drove of livestock or operating a modern automobile. The statute simply set up a sort of quarantine to stop the haphazard transportation of dead animal bodies over state roads and to prevent the return into the state of contaminated vehicles from some unknown source over which the state has no control.

The statute occupies a field into which Congress has not entered and, considering the practical results from an enforcement of the law, it can hardly be regarded as unduly burdensome to interstate commerce.

We suggest in conclusion an observation of Justice Holmes:

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories."

Davis v. Mills, 194 U. S. 451, 457.

Respectfully submitted,

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February, 1939.

APPENDIX "A"

CHAPTER 278.

[H. 258. Approved March 12, 1937.]

AN ACT to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect.

Carcasses of Dead Animals—Transportation and Disposal —Policy Declared.

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That it is hereby declared to be the public policy of the State of Indiana, acting through its general assembly, to control and regulate the transportation over the highways of this state and the disposal of the carcasses of dead animals, not slaughtered and intended for human food, to the end that the spread of animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such carcasses and from such transportation and disposal thereof, if the same be not required by law; and this act is designed to effectuate such purposes and public policy, through the exercise of the police powers of the state. This act shall be liberally construed to effect such policy and to promote such objects.

Persons—Things—Transactions Exempt.

SEC. 2. Nothing contained in this act shall apply to or effect [affect] any of the following persons, matters, or vocations, to-wit:

(a) To any person slaughtering, butchering, manufacturing, or selling, in any manner, any animal flesh and products, where such animals are killed for the purpose of being used solely for human consumption, or to persons engaged in transporting and disposing of the dead bodies

of any such animals so killed or of any parts or products thereof to any person solely for such purpose and use.

(b) To any person transporting, disposing of, or selling the hides or skins of animals;; or tanning such hides or skins for himself or other persons.

(c) To any bodies of dead fowls, birds, fish, reptiles, or small animals of any kind, such as dogs, cats and small game.

(d) To any governmental agency, collecting, transporting, or disposing of the bodies of any dead animals in any manner.

No provisions of any other laws or ordinances regulating any of the persons, matters or vocations aforesaid shall be affected or repealed by this act.

Meaning of Terms.

SEC. 3. That, as used in this act, unless a different meaning is required by the context and may be necessary to effectuate the purpose of this act, the following definitions shall apply:

Person.

(a) The term "person" shall include individuals of either sex, firms, co-partnerships, associations, joint ventures and corporations, of all kinds and places of residence, or any other group or combination acting in concert; and the plural, as well as the singular number; and whether acting as a principal, trustee, receiver, or as any other kind of legal or personal representative; or as the successor in interest, assign, agent, factor, servant, employee, director, officer, or any other representative of any such person.

Gender.

(b) The masculine gender shall include the feminine and neuter genders; and the singular number shall include the plural number as to all words and phrases.

Disposal Plant.

(c) The term "disposal plant," or "plant," shall apply to and include any plant and all the equipment thereof described or referred to in any section of this act, that is constructed and intended to be operated for the disposal of the bodies of dead animals by means either of burying, or burning, or cooking, or other method herein prescribed, or hereafter provided for by law and not otherwise defined; and shall also include all substations of any such plant that are used in connection with such business solely for the temporary deposit or storage of such dead bodies that are transported thereto by a licensee pending final delivery thereof to any such disposal plant; and shall also include all vehicles and equipment thereof used by a licensee for the transportation of such bodies to such plant for their disposal therein in any manner herein prescribed.

State Veterinarian.

(d) The term "state veterinarian" shall mean the officer now designated by statute under such name; and in the event of any subsequent change of such title, or duties, it shall be deemed to refer to and mean the particular official or body of this state designated by statute to succeed to and perform either the same or similar duties required under this act; or if not so designated by statute, the governor shall designate some official for such purposes.

Disposal Plant—Operation—License for—Unlawful Acts.

SEC. 4. (a) No person shall engage in this state in the business of operating a disposal plant, as herein defined, without first obtaining for each such disposal plant so operated by him, or in his behalf, a license and any vehicle certificates required, as herein provided; and no person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, shall either transport over any highways of this state, or dis-

pose of to any person, the bodies of any dead animals in any manner herein prescribed, or in any other manner not permitted by law.

State Veterinarian—Record.

(b) The said state veterinarian shall keep a record of all applications for permits, licenses and vehicle certificates, showing all thereof issued, denied, or revoked by him, and such other facts as he may prescribe.

Acts Constituting Violations of Act.

SEC. 5. Any person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, who shall advertise either in any newspaper having a general circulation in any county of this state, wheresoever published, or in any manner by written, printed, typed or painted matter of any character, or by signs or any kind of other devises, whereby he shall indicate that he is engaged in transporting and disposing of dead animals in any manner and for any purpose not excepted in this act; or who shall obtain from any other person, by purchase or otherwise, the body of any such dead animal, in whole or in any part, for the purpose of transporting the same over any highway of this state and of disposing of the carcass, or the hide, skin, grease, or other products, of such dead animal, to any person or by any method designated to effect a profit therefrom for himself, shall be guilty of violating this act, and shall be subject to all the penalties of this act.

License—Application for—Contents—Fee.

SEC. 6. Any person desiring a license to engage or continue in such business under this act, shall file an application for such license with the state veterinarian, on a form provided by him without charge, which application shall set forth the name and residence of the applicant, the location of his place of business, the particular method, or

methods, which he intends to employ, or is employing, in the transportation and in the disposal of the bodies of such dead animals; the number and location of all substations he desires to operate, if any; the number and kind of vehicles he will use; and such other essential information relative thereto as such officer, by his rules and regulations, may require. Such application shall be accompanied by an initial installment of $100.00 on the total annual license fee, to apply upon the expenses imposed by this act: Provided, however, That any person, now having or operating a disposal plant, with or without any substations, and holding an annual license therefor, under existing law, shall be entitled to continue such operation until the date such license expires; but not later than thirty days prior to such date of expiration, he must apply for a license under this act, and pay the fees as herein provided, if he desires to continue such business, without interruption, and thereby he shall have a right so to continue under his old license, by paying all annual fees, at the rates fixed by this act, until his new license under this act shall be granted, or if refused, until any such refusal shall be finally sustained upon any appeal taken by him from such decision.

License—Applicant—Investigation.

SEC. 7. (a) Upon receipt of such application, the state veterinarian, or some person appointed and designated by him, shall, within thirty days, if the applicant then is or has been the holder of a license under any prior statute in the conduct of an established business of such kind in this state, inspect the plant as herein defined, and the locality where such applicant is conducting or proposes to conduct such business, and shall ascertain whether or not such applicant is a responsible and suitable person, financially and otherwise, to be entrusted with a license to conduct such business, and that he has fulfilled and complied with the requirements of all the sections of this act and of the rules and regulations herein authorized relating to such business.

License—Issuance—When.

(b) If such state veterinarian shall find that such applicant is such a responsible and suitable person to conduct such business, and that the disposal plant of such applicant, as herein defined, and the methods of operation thereof comply with all the provisions of this act and with the rules and regulations herein authorized, and that such business is located in a place permitted by this act, he shall thereupon issue to such applicant a certificate to that effect. Thereupon such applicant shall pay to said state veterinarian the further and final installment of $50.00 for said annual license fee and said state veterinarian shall issue to such applicant a license and four vehicle certificates and metal discs bearing the applicant's name and license number, one of which discs shall be attached to each vehicle so used, which license shall entitle him to operate one disposal plant and which certificates shall entitle him to operate not more than four vehicles for transporting bodies in such business; Provided, however, That for each such additional vehicle the licensee desires to operate he shall pay an additional annual fee of $5.00 and procure an additional vehicle certificate and disc, and for each substation located elsewhere than on the grounds of the disposal plant he shall pay an additional annual license fee of $20.00 and procure a substation license: and Provided further, That the full annual license and other fees specified in this act shall be paid for any licenses and vehicle certificates issued in any year on or prior to June 30, and one-half of all such fees shall be paid for the first year for any such license or vehicle certificate issued in any year after June 30.

Licenses—Expiration.

(c) All licenses and vehicle certificates issued under this act shall remain effective until and unless voluntarily surrendered, or suspended or revoked, as provided in this act; conditioned, however, upon payment to the state veterinarian on or before January 15 of each calendar year subsequent to the year of issue, of the required total

annual license and other fees herein provided for and specified, as aforesaid, which payment shall operate, without further application, to continue such licenses and vehicle certificates in full effect during each calendar year for which such license and other fees shall be paid, unless sooner surrendered, or suspended or revoked, as herein provided.

Inspections of Plant — When — Additional Inspections — Fees.

SEC. 8. (a) Whenever the state veterinarian, by his first inspection of the applicant's plant, as herein provided, shall find that the applicant has not complied with all the requirements of this act and of such rules and regulations, he shall at once notify the applicant in writing, delivered in person or by registered mail, with return receipt, specifying the particulars of such failure to comply therewith and of any further objections he may have. Upon being notified in like manner by the applicant in writing of such compliance and that such plant conforms to the requirements of this act and of such rules and regulations, the state veterinarian shall, within ten days, make a similar second inspection thereof, but shall not be required to make more than two of the aforesaid initial inspections of the same plant under one application and the original payment of fees, unless he so desires. If one or two inspections additional to the second inspection are desired by the applicant in effecting a compliance by him with the requirements of this act, such applicant shall request the same in writing and pay in advance additional inspection fees of $25.00 for each such inspection so requested by him; but for any further such inspections he shall pay a fee of $100.00 each.

Fees—Disposition.

(b) In the event such applicant shall be refused a license and such refusal be finally sustained upon any appeal, no part of the fees paid by him shall be refunded, but all thereof shall belong to the State of Indiana, as a part of its general fund.

Disposal Plants—New or Reconstructed—License—Application—Contents—Fees.

SEC. 9. (a) Any person not owning or in control of and now operating an established plant, but desiring to engage in such business and to construct a new plant, or reconstruct and re-open a plant previously closed, shall first file with the state veterinarian, on a form furnished without charge by him, an application for a permit for such purpose, with such information as may be required, together with a set of detailed plans and specifications for the plant so proposed to be constructed or reconstructed, and shall also pay therewith to the state veterinarian a fee of one hundred dollars to cover the additional expense of investigating and passing upon such application and as the initial payment upon the license fee, if granted or denied. Such applicant shall also set out a general statement of his proposed plan and method of operating said business and said plant, and shall show that it is proposed to be located or continued in a place permitted by this act. Said state veterinarian is authorized to submit such plans and specifications and other information to any qualified architects and engineers employed in any other department of the state government, or if necessary, to submit the same to any such qualified person not employed by the state and to pay the latter out of the fee aforesaid a sum not exceeding $100.00 for examining such plans and specifications and advising him whether the same comply with the provisions of this act. The aforesaid initial and final payments shall be made regardless of the time in any year such application shall be filed.

Veterinarian—Inspection—License—Fee.

(b) If the state veterinarian shall find that such applicant is a responsible and suitable person to conduct such business and that such plans and specifications and proposed method and place of conducting such business comply with all the requirements of this act and of such rules and regulations, he shall thereupon issue to such applicant a permit to construct or reconstruct such plant. Upon the

completion of such plant and before the same is placed in operation, such applicant shall notify the state veterinarian thereof, who shall thereupon make the same kind of inspections as are provided aforesaid for existing established plants, and in all respects the procedure established for such inspections and the issuance of a license. with the payment of the additional installment of $50.00 for the annual license fee and any required additional fees by such applicant, shall apply, and the license shall be either issued or denied in the same manner and subject to all the other provisions of this act; except that for each subsequent year the annual license and other fees shall be the same as for similar existing licensed plants.

New Plants—Location.

SEC. 10. (a) No such new plant shall be located or constructed, or any discontinued plant reconstructed or re-opened, at any place in this state inside of, or within two miles of the nearest point of the corporate limits of any city or town; nor within one mile of the nearest boundary of the lands then owned or controlled in connection either with any state, county, township, city, or town park, or boulevard; or of any public school or hospital; or of any charitable, religious or educational institution.

Existing Plant—Destruction—Reconstruction Prohibited—When.

(b) In the event that any existing disposal plant shall have been or may be hereafter destroyed in any manner, except during the war, to the extent of at least two-thirds of the operating portion thereof, the same shall not be reconstructed and such site shall not be again used for such purpose, if it be located in or within the distance aforesaid from any of the places or objects designated in this section.

Dead Animals—Hauling—License.

SEC. 11. (a) No person, except as herein provided, may haul or transport over the highways of the State of

Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business.

Hauling—License—Qualification.

(b) No license shall be issued to any person solely for the purpose of transporting the bodies of dead animals, but such transportation must be done solely by persons holding a license for disposal plants, so that such dead bodies may be properly and promptly disposed of under the requirements of this act; except that any public official of this state, charged by law with such duties, may remove or supervise the removal of any such dead bodies and the disposal thereof by any method provided for by this act where necessary to protect the public health and welfare.

Hauling—Vehicles Used in—Specifications.

(c) All vehicles used in the transportation of the bodies of dead animals, under the provisions of this act, shall have a tank or metal lining in the bed of such vehicle, or be otherwise so constructed that the same shall be practically watertight, so that no drippings or seepage from such dead bodies shall escape from such vehicle where this can be obviated; and all vehicles must have an end-gate constructed or lined with the same material and hinged at the bottom and fastened firmly at the top when closed and so designated, so far as practical, that drippings and seepings shall not escape from such part of said vehicle while engaged in such transportation; and every such vehicle shall have a bed of such depth and type of construction and equipment that any dead body or bodies therein shall be completely hidden from view of persons using the highways and any public nuisance obviated while being transported.

State Veterinarian — Additional Regulations — Authorization.

(d) The state veterinarian may prescribe specific and also additional requirements, not inconsistent with the provisions and purposes of this act, governing and regulating such transportation and the construction, equipment, maintenance and operation of such vehicles.

Vehicles—Cleansing—Disinfection.

(e) After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies.

Bodies of Diseased Animals—Hauling—Driver—Duty.

(f) Vehicles, when loaded with the body of an animal which has died of disease, shall be driven directly to the place of disposal, except that the driver may stop on the highway for other like dead bodies, but he shall not drive upon the premises of any person unless he first obtains the permission of such person and he shall avoid creating any nuisance during such transportation and in the event any drippings or seepage should escape from such vehicle, to his knowledge, he shall clean up the same and remedy such escape, if possible to do so.

Dead Animals — Bodies — Duty of Owners or Persons Caring For.

Sec. 12. No person owning or caring for any animal that has died from any cause shall allow the body to lie about his premises. Any such body shall be disposed of by

such person within twenty-four hours after knowledge of such death, either to a person licensed under this act to dispose of it, as herein provided for disposal plants; or by the owner or person entitled to such body causing the same to be buried within that time upon his own or any other available premises, where the transportation of said body along any highway of this state is not required. Any such burial shall be so done as not to produce a nuisance, and such body shall be buried to such a depth that no part thereof shall be nearer than four feet to the natural surface of the ground and every part of such body shall be covered with at least four feet of earth in addition to any other materials that may be used for that purpose: Provided, however, That any person so owning or controlling any dead animal, that has not died of a contagious disease, shall have the right to remove the hide or skin thereof on his own premises before burying such body as herein prescribed, but such skinning must be done and the disposition of such hide, or skin and body must be made in a manner that will avoid the creation of any nuisance. No body of any dead animal shall be hereafter burned or cooked, or otherwise disposed of, except by burial as in this section provided, at any place in this state except at a disposal plant licensed as provided in this act: or as may be otherwise excepted by this act. Nothing contained in this act shall be so construed as to prevent any person residing outside of the corporate limits of any city or town, from disposing of the dead bodies of animals belonging to such person, by burning or burying such dead animals on the premises of such owner. Provided, further, That no person shall bury or burn the body of any dead animal within the corporate limits of any city or town where the same is prohibited by law or ordinance.

Disposal Plants—Specifications.

SEC. 13. No disposal plant shall be deemed a suitable or sanitary place for disposing of the bodies of dead animals by any process of cooking or burning, unless it conforms to the following minimum specifications:

Building.

(a) The building must have four (4) walls complete and be provided with concrete or cement floors and with good drainage and be thoroughly sanitary in construction and maintenance; and any sewage, drainage, or waste water of any kind, if of an offensive or obnoxious character or odor, detrimental to human, animal, agricultural or aquatic life, or that may constitute a public nuisance, shall not be permitted to escape therefrom until first treated as herein specified. All sewage, drainage, or waste water must first pass through a septic tank or a filter bed or covered settling pool, that will destroy all infection therein before passing therefrom and must not thereafter, at any time, empty or pass into any body of water, or any stream other than a running stream, or if emptying upon the ground, on the premises of said plant, it must be absorbed by the soil and not be allowed to collect in open pools, or in any other manner so as to create a public nuisance.

Equipment.

(b) All such plants must be properly equipped and operated with steel tanks, enclosed dryers and cold water condensers, and on and after January 1, 1940, all bodies shall be reduced only by steam cooking in all plants operating in this state; except in emergencies, where burning may be permitted under regulations prescribed therefor by the state veterinarian.

Tanks.

(c) All tanks shall be airtight, except proper escapes for live steam, passing through the tanks during cooking, which steam shall be condensed by use of cold water condensers. All such equipment shall be so construed [constructed] and maintained as to prevent any avoidable escape of odors into the air.

Dry Rendering.

(d) If a method of dry rendering is used, the heat and discharge doors of the vessels shall be of a type using gaskets, with the doors drawn tight with bolts against such gaskets, and with packing boxes around the agitator shafts, and with vent for drawing off condensation, so constructed that the discharge shall be condensed by the use of cold water condensers of sufficient capacity, and with all thereof and every other part and opening in said equipment so constructed and maintained that there will be no avoidable escape of odors into the air.

Disposal of Bodies—Time Limit—Exceptions.

(e) All skinning and dismembering of bodies shall be done within such building and in such manner and shall be so kept therein that no unnecessary annoyance shall be caused other persons by the conditions or unsightly appearance of such bodies of any parts and contents thereof; and all such bodies and all parts and contents thereof, shall be disposed of within twenty-four hours after delivery to such plant, by some method herein specified; except where rendered impossible by accident or other casualty preventing the operation of the plant, except where some epidemic or act of God has caused more bodies to be accumulated than can be reasonably disposed of within such period of time by the continuous operation of the plant; in any of which events the plant shall be placed in operation as soon as possible and shall be operated continuously until all bodies are disposed of.

Burning—Regulations.

(f) In the event any bodies, or parts thereof, are disposed of at such plant at any time by burning, the plant and equipment used therefor shall be so located, constructed, arranged, maintained and operated that no avoidable odors will escape into the air; and all portions of such bodies not so entirely consumed, or that may be otherwise left undisposed of, shall be buried, as herein provided.

Burial of Bodies—Duty.

(g) In the event any bodies, or parts of bodies, are disposed of at said plant by burying the same, this shall be done in the same manner and period of time after receiving the same as is provided in this act such [for] such burial by the owner or person controlling such bodies prior to disposition thereof to any such plant.

Nuisance Prohibited.

(h) Such disposal plant shall be so situated, constructed and maintained and all operations therein so conducted at all times as not to create and continue unnecessarily a public nuisance.

Rules and Regulations—Effective—When.

Sec. 14. The state veterinarian shall make, publish and enforce such reasonable rules and regulations relating to such disposal plants and dead bodies and all matters connected therewith, as he may deem advisable and which are not inconsistent with any of the provisions of this act. All such rules and regulations shall be in writing or printed and two copies thereof shall be sent to each person holding or receiving a license under this act, also to the clerk of each county in this state, which rules shall be forthwith spread of record and properly indexed for reference thereto, and no such rule or regulation, or any subsequent changes therein, shall be effective until ten days after such copies shall have been mailed to the last of such county clerks and to each such licensee, a record of which mailing shall be entered by such state veterinarian on his records. Such rules and regulations shall have the force and effect of law and all persons within the provisions of this act shall obey and comply therewith.

State Veterinarian—Plants—Inspection of—Duty.

Sec. 15. The state veterinarian, in person or by anyone authorized by him, shall inspect each plant and place licensed under this act at least once each year, and as

often as he may deem necessary, and shall see that th licensees and all other persons comply with this act an conduct such business in conformity to this act and to th rules and regulations made and published by him pursua thereto.

Licenses—Suspension—Revocations—Grounds—Hearing—Procedure—Order—Appeal—Procedure.

SEC. 16. The state veterinarian shall have power t suspend for any fixed period, or to revoke the license he by any licensee under this act, in the event such licens shall violate and fail or refuse to obey any of the pro sions of this act, or of the aforesaid rules and regulation or in the event any licensee has been finally convicted violating the laws of this state or of the United States any manner affecting his conduct of said business; or the event the state board of health shall certify in writi to the state veterinarian that any particular disposal pla is a menace to the public health, stating the charg specifically and definitely, in which case the hearing he inafter provided for shall be held within thirty days aft such charges of said board are so filed: Provided, ho ever, That before any license shall be suspended revoked, the licensee shall be furnished with a writt copy of the charges made against him and a hearing sha be had before the state veterinarian, or his authori representative, at such time and place as he may fix, up at least ten (10) days notice in writing to the licens to determine whether such license shall be suspended revoked, which notice may be served either by register mail, with return receipt, addressed to such licensee at t address shown in his application, or in the manner pr vided by law for the service of a summons. At the ti and place fixed for the hearing, the licensee may appe in person and by counsel and such charges shall be deem denied, without any answer thereto, unless the licens desires to file an answer. The hearing shall be conduct in a summary manner, under such procedure as the rul and regulations may prescribe, and the state veterinaria

or his representative, shall receive and hear all the evidence and arguments offered by both parties and shall afford the licensee full opportunity to present all defenses available to him. When a hearing under this section is conducted before a representative of the state veterinarian, a written report and summary of the evidence at such hearing shall be made by him to the state veterinarian, with recommendations for action thereon. The state veterinarian, after such hearing before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order in the premises as he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license, which order shall be entered on his records and written notice thereof shall be forthwith mailed by registered mail, with return receipt, to or served personally upon such licensee: and, Provided, further, That any licensee affected adversely by any such decision and order of the state veterinarian may appeal therefrom to the Circuit Court or Superior Court of the county in which the plant is operated by the licensee, by filing in such court, at any time within thirty days after the day on which such decision and order is entered of record, a complaint to rehear such charges, which complaint shall name the state veterinarian as the sole defendant and shall be sufficient if it set out a copy of the charges and of any answer filed, upon which such hearing was conducted, and recite generally the conduct of such hearing and the decision and order made therein and pray for a new hearing and judgment by the court. The party appealing shall file at said time, with the complaint, a bond, with such surety or sureties as the clerk of such court may approve, conditioned to pay all costs if such appeal be decided adversely to the appellant, and he shall also cause a summons to be issued and served upon such state veterinarian, as in other civil actions. Either the attorney-general of the state, or the prosecuting attorney of said county, or both, upon notice from the defendant, shall appear for such state veterinarian and defend such appeal. A motion to dismiss said appeal

may be filed by the defendant, if it be not perfected in time, but no further pleadings shall be required, and the allegations of such complaint shall be deemed denied. The appellant shall have the right to inspect and obtain copies of any of the proceedings, papers and records in the office of said state veterinarian or under his control, applicable to or affecting such hearing and appeal. Such appeal shall be placed on the advance calendar and heard as soon as possible, and if the court be in vacation, the same may be heard at any time by the judge thereof, or by any other judge designated and appointed by him, in the same manner and with the same effect as if all such proceedings were conducted in term. The court shall hear and conduct said appeal de novo, as a civil action, upon all the issues; and either party shall be entitled to offer all competent evidence relevant thereto, and the court shall be governed in all other respects by the procedure and rules governing the trial of civil causes; except that such appeal shall be tried and decided solely by the court, and either party may have a change of judge, but there shall be no change of venue from the county. The court shall make a general finding and render judgment thereon and shall have the power to reverse, affirm, or modify, in whole or in part, the decision and order appealed from, and a certified copy of such judgment, when final, shall be filed with said state veterinarian, who shall enter the same of record and in all things comply therewith. Either party to such proceedings may appeal from the decision and judgment of such court to the Appellate Court of Indiana, as in other civil causes, and such appeal shall operate as a stay of such judgment until finally determined.

License—Suspension—Revocation — Order — When Effective.

SEC. 17. (a) No decision of the state veterinarian suspending or revoking any license shall become effective until the expiration of the period of thirty days allowed for appealing from such decision; and in the event of any such appeal to the lower court, or thence to the Appellate

Court by either party, such decision shall not become effective until any such appeals are finally determined, as aforesaid.

Compliance with Act.

(b) Pending any proceeding to suspend or revoke any license, or any appeal from any decision therein, every person affected thereby shall continue to comply with this act, and such compliance may be enforced then and at all other times by any appropriate action in the name of the State of Indiana, which shall be filed and conducted by the attorney-general upon written request of the state veterinarian.

Violation of Act—Penalties.

SEC. 18. The violation of any of the provisions of this act, or the rules and regulations made in pursuance thereof, is hereby made a misdemeanor and any person, upon conviction thereof, shall be punished by a fine of not less than $25.00, nor more than $100.00, for the first offense; and by a fine of not less than $100.00, nor more than $500.00, for the second offense; and for any subsequent offense, in addition to the fine provided for a second offense, there may be added imprisonment in the county jail for not more than ninety days.

Fees—Disposition—State Veterinary Disposal Plant Fund —Appropriation.

SEC. 19. All monies received by the state veterinarian under this act shall be reported by him to the auditor of state, at the end of each month or at such other time as may be prescribed by law, and at the same time he shall deposit the entire amount of such receipts with the treasurer of state for deposit in the state general fund, but all monies so received shall be paid into a special continuing account of such general fund to be known as "state veterinary disposal plant fund," and shall be available for the

payment of all the necessary expenses in carrying out all the provisions of this act, which payment shall be made as now or hereafter provided by law: Provided, however, That at the close of each fiscal year any sum of money in said special account, in excess of five thousand dollars ($5,000.00), shall revert to the general account of the state general fund. For the purpose of providing a fund to administer this act until sufficient monies are received from license fees, the sum of five thousand dollars ($5,000.00), or so much thereof as may be necessary, is hereby appropriated to the aforesaid special account out of any monies in the state treasury not otherwise appropriated, to be available from the date that this act takes effect for a period ending June 30, 1939.

Separability.

SEC. 20. Should any section, or any clause, sentence, provision, phrase, or word of any section of this act be declared invalid for any reason, or be repealed, the validity of any and all other portions and provisions of this act shall not be affected thereby; but it is hereby declared that each and all of such other portions and provisions would have been enacted if any or all of such invalid or repealed portions or provisions had not been contained herein, and all such remaining portions and provisions shall be construed, if possible so to do, so as to uphold and effectuate the purpose and effect of this act in all matters covered thereby.

Specific and General Repeal.

SEC. 21. That each of the following acts, or parts of acts, and all acts amendatory thereof or supplemental thereto, be and each is hereby specifically repealed, to-wit: Acts of 1905, section 592½ of Chapter 169; Acts of 1913, Chapter 111; Acts of 1913, Section 8 of Chapter 135; and Acts of 1935, Chapter 205; and generally all laws and parts of laws in conflict herewith are hereby repealed.

Construction of Act.

SEC. 22. This act, or any provision thereof, shall not be construed as being repealed by implication by any other act passed at the same time or subsequent to it at this session of the general assembly, but any repeal thereof shall require a specific reference to this act by its title and date of approval. Except as it may be so specifically repealed, this act shall control in all its provisions over any other act passed, as aforesaid, at this session, in the event of any conflict therein, if such provisions in any or all such acts cannot be reconciled so all may remain effective: Provided, however, That in the event any other act passed at any time should provide generally that license fees shall be payable for an annual period beginning either with the state fiscal year, or with any other date than the calendar year, then the respective months of such annual period corresponding in order to January and June, as designated in this act for such payments, shall be substituted for the latter said months as the times for payment of license fees and other charges hereunder, and the last day of the month ending any semi-annual period shall be used in computing such period.

Effective Date.

SEC. 23. This act shall be in full force and effect on and after April 1, 1937.

APPENDIX "B"

OPINIONS OF THE SUPREME COURT OF INDIA

State of Indiana v. Gerrit W. Clason, decided Feb. 7,
12 N.E. (2d) 750.

The appellee, as defendant below, was charged by
davit in one count with a misdemeanor for the violat
of Chapter 278, Sec. 11, Acts of 1937. There was a mo
to quash on the grounds (1) that the facts stated in
affidavit did not charge a public offense, and, (2) that
affidavit contained matter which, if true, constitute
legal justification of the offense charged. The trial c
sustained the motion to quash and discharged the defe
ant, with a finding that the statute is unconstitutional.
was not claimed that the charge was otherwise insuffici
and the State has appealed.

The affidavit alleges in substance that on a date na
therein the defendant unlawfully hauled and transpo
over a certain public highway in Elkhart County, Indi
to a disposal plant located in the State of Illinois, a d
horse, which had not been slaughtered and intended
human food, the defendant not being licensed so to do
required by the above act.

The act upon which the prosecution was based is leng
and we deem it sufficient for the purposes of this ap
to summarize its pertinent provisions. The title discl
that its purpose is to "control animal diseases and
regulate the transportation and disposal of the bodie
dead animals." The first section recites that it is
exercise of the police power of the State to prevent
spread of animal diseases, to conserve the public he
and to protect the citizens against dangers and nuisan
The act has no application to persons slaughtering
butchering animals for human consumption, nor to
transportation of the products thereof. The disposa
the bodies of dead fowl, birds, fish, reptiles and of s
animals, such as dogs and cats and small game, are
wise exempted.

Standards for disposal plants are set up and frequent inspections thereof provided for. Annual licenses are required for these establishments and the cost of administering the act is paid out of the proceeds thereof. Only holders of licenses may operate vehicles for the transportation of dead animals on the public highways of the State, and there are express requirements as to the equipment of these vehicles. The beds in which dead animals are hauled shall be tight, so as to avoid drippings and seepings, shall be of sufficient size and depth to hide the contents thereof from the view of other persons using the highways, and such vehicles are required to be thoroughly cleansed and disinfected after use. The act authorizes the owner of any dead animal to bury or burn the same on his own premises, if they are without the corporate limits of any city or town; such owner may also salvage the skin of any dead animal and transport it to market, if such animal shall not have died of a contagious disease.

Appellee's brief has been of no aid to the court in the consideration of this case. It contains no helpful propositions, and no points and authorities, beyond the bare assertion that the act upon which the prosecution is based violates Article I, Section 8, Clause 3, of the Constitution of the United States. This is the so-called interstate commerce clause, and it provides: "The Congress shall have power to . . . regulate commerce . . . among the several states."

While the laws of the state must yield to Acts of Congress passed in execution of the powers conferred upon it by the Constitution, the mere grant to Congress of the power to regulate commerce among the states does not, of itself and without legislation by Congress, impair the authority of the states to establish such reasonable regulations as are appropriate for the protection of the health, the lives and the safety of their people. New York, etc., R. Co. v. New York (1897), 165 U. S. 628, 631, 17 S. Ct. 418, 41 L. Ed. 853.

When the local police regulation has real relation to the suitable protection of the people of the State, and is rea-

sonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority. Savage v. Jones (1912), 225 U. S. 501, 32 S. Ct. 715, 56 L. Ed. 1182-1185; Austin v. Tennessee (1900), 179 U. S. 343, 349, 21 S. Ct. 132, 45 L. Ed. 224, affirming (1898) 101 Tenn. 561, 49 S. W. 305, 70 Am. St. Rep. 703, (50 L. R. A. 47[illegible]).

Under the exercise of the police power it has been held that a state may adopt laws: Prohibiting the shipment out of the state of citrus fruits which are unripe or otherwise unfit for consumption, Sligh v. Kirkwood (Fla. 1915), 237 U. S. 52, 35 S. Ct. 501, 59 L. Ed. 835; prohibiting the slaughtering of calves unless in healthy condition and at least four weeks old, and prohibiting the shipment of veal from such animals to or from any part of the state, People v. Bishopp (1904), 44 Misc. Rep. 12, 89 N. Y. S. 709; prohibiting healthy persons, either from within or without the State, entering an area infected with a contagious disease, Compagnie Francaise v. Louisiana State Board of Health (1902), 186 U. S. 380, 385, 22 S. Ct. 811, 46 L. Ed. 1209; prohibiting the disinterment or exhuming of the body of a deceased person, even when it is intended to transport the remains of an alien to his own country for final sepulture, without first obtaining a permit from the proper officer, In re: Wong Yung Quy (C. C. Cal. 1880), 2 Fed. 624.

It has not been pointed out to us wherein the subject matter of the act before us conflicts with any federal legislation, and we know of none. We find nothing in its purposes or provisions repugnant to the settled principles of constitutional law. The wisdom of the law was for the determination of the legislative branch of the government and we think the objectives being for the protection of the public health, the health of domestic animals of great economic value, and the prevention of nuisances on the highways of the State were all within the purview of the powers of the General Assembly. We are obliged to indulge the presumption that the act is constitutional unless and until the contrary is made to appear. Weiss

...ner v. State (1931), 202 Ind. 424, 175 N. E. 238; Levy ... State (1933), 161 Ind. 251, 68 N. E. 172; Overshiner v. ...te (1901), 156 Ind. 187, 59 N. E. 468. We therefore ...d the act valid and that the affidavit charged a public ...ense.

Reversed, with directions to overrule appellee's motion ...quash and to require him to plead to the charge.

...ge of Indiana v. Gerrit W. Clason, rehearing denied March 10, 1938, 13 N. E. (2d) 307.

And afterwards to-wit: on the 10th day of March, 1938, ...ing the 94th Judicial Day of the November Term, 1937, ...ppellee's petition for rehearing was denied with the fol...wing opinion pronounced by Shake, J.:

In our original opinion, 12 N. E. (2d) 750, 751, we said: "Appellee's brief has been of no aid to the court in the consideration of this case. It contains no helpful propositions, and no points and authorities, beyond the bare assertion that the act upon which the prosecution is based violates Article I, Section 8, Clause 3, of the Constitution of the United States." The appellee, through other counsel, has now presented a petition for rehearing, supported by an able and exhaustive brief. For this reason we deem it proper to express our views with reference to the propositions therein contained.

We find no objection to the statement of general principles contained in appellee's petition, to the effect that in passing upon the constitutionality of an act, its purpose must be determined from its natural and reasonable effect; that the legislative declaration of purpose is not binding, and that whether a regulation of a useful business is a valid exercise of police power is a judicial question.

The appellee has cited a number of cases from this court and from the Federal courts to sustain his claim that the statute under consideration constitutes an unauthorized interference with interstate commerce. One of the clearest and most comprehensive statements that we have seen with reference to the authority of the states to legislate upon such subjects, is to be found in the case of

Oregon-Washington Railroad & Navigation Co. v. St
of Washington (1926), 270 U. S. 87, 46 S. Ct. 279, 283
L. Ed. 482. In that case Mr. Chief Justice Taft said: "
the relation of the states to the regulation of interst
commerce by Congress there are two fields. There is
in which the State can not interfere at all, even in
silence of Congress. In the other * * * the State m
exercise its police power until Congress has by affirmat
legislation occupied the field by regulating interstate c
merce and so necessarily has excluded state action."
the same case the distinguished jurist further says: "
the absence of any action taken by Congress on the subj
matter, it is well settled that a State in the exercise of
police power may establish quarantines against human
ings or animals or plants, the coming in of which may
pose the inhabitants or the stock or the trees, plants
growing crops to disease, injury or destruction there
and this in spite of the fact that such quarantines ne
sarily affect interstate commerce."

If a state may, in the exercise of its inherent po
power, adopt quarantine statutes prohibiting the impo
tion of dangerous or noxious articles or objects, we th
it may likewise, inferentially, license and regulate the
of its highways to accomplish the same ends, even tho
such regulation may incidentally affect interstate c
merce. Kidd v. Pearson (1888), 128 U. S. 1, 9 S. Ct
32 L. Ed. 346.

It seems to us that the proper disposition of the app
is to be found in the answers to these questions: (1)
Chapter 278, Acts of 1937, a reasonable quarantine reg
tion within the police power of the State which incid
tally affects interstate commerce; or (2) is it a dir
interference with interstate commerce, under the guise
an exercise of the police power?

We cannot, in the interest of space and time, review
of the authorities cited by the appellee, but shall point
wherein several of them are not applicable to the situat
with which we are here dealing. The cases reviewed
typical of the others relied upon.

In The State, ex rel. Corwin v. The Indiana, etc., Mining Co. (1889), 120 Ind. 575, 22 N. E. 778, 780, 6 L. R. A. 579, this court considered an act prohibiting the transportation of natural gas from any point within this State to any point or place without the State. The court held that the interference with interstate commerce, under the circumstances shown, was direct and not merely incidental. In the opinion Chief Justice Elliott said: "The act does not assume to provide for the safety, health, or comfort of the citizens * * *. It is not a regulation of the mode of procuring, transporting, or using natural gas designed to secure the health, safety, or comfort of the citizens of Indiana. * * * The act can not be taken out of the operation of the Federal decisions upon the theory that it is a valid exercise of the police power resident in every sovereign state, for the theory is without foundation."

In Jamieson v. The Indiana Natural Gas & Oil Co., et al. (1891), 128 Ind. 555, 28 N. E. 76, 83, 12 L. R. A. 652, this court had under consideration another natural gas statute which prohibited the transportation of gas within or without the State under artificial pressure exceeding 30 pounds per square inch. In holding the statute valid, the court remarked: "We do not assume that a State can legislate for the regulation of interstate commerce—that power is undoubtedly Federal—nor do we assume that under the guise of exercising the police power there may be a regulation of commerce between the states, but we do assume that it is settled by the decisions that State legislation is not invalid simply because it operates upon or affects commercial commodities or instrumentalities. So long as there is nothing more than an exercise of the police power, and no regulation of commerce, there is nothing more than the exercise of a State power."

In Manufacturers Gas, etc., Co. v. The Indiana Natural Gas, etc., Co. (1900), 155 Ind. 545, 58 N. E. 706, 707, this court held another statute regulating the transportation of natural gas unconstitutional, and said: "Nothing done by the appellee is complained of, excepting only that it removes natural gas out of the State of Indiana. No ground

for the exercise of the police power of the State to pr
vent such removal is shown. Nothing, save the nake
right to transport the gas beyond the limits of this Stat
is contested in this action. The only reason which can b
urged in support of the restraint sought to be impos
upon the appellee is that the supply of natural gas bei
limited, and the article being one of great value and co
venience, its use ought to be reserved for and enjoyed b
the people of this State, to the exclusion of the inhabitan
of any other State."

The appellee has also cited and quoted from Foste
Fountain Packing Co., et al., v. Haydel (1928), 278 U.
1, 49 S. Ct. 1, 4, 73 L. Ed. 147. This is the so-call
"Louisiana Shrimp case" and involved the constitutio
ality of a statute of that state which prohibited the shi
ment to other states of shrimp taken from the waters
Louisiana, unless they were processed in its factories. T
act related directly to interstate commerce, and the co
said: "But by permitting its shrimp to be taken and
the products thereof to be shipped and sold in interst
commerce, the State necessarily releases its hold and
to the shrimp so taken, definitely terminates its control
The act in question was in no sense a health or quarant
measure, and we do not consider it as bearing upon
proposition before us.

In the case of Vandalia Coal Co., et al., v. Special C
& Food Comm. of Indiana, et al. (1920), D. C., 268 F
572, 573, the court held invalid an order of the Coal a
Food Commission of Indiana requiring coal mines wh
had contracted to deliver their products outside the St
to sell them within the State. This was held to be a dir
burden on interstate commerce. But the court recogni
the presumption that a statute is valid until the contr
is shown, and that a state is free to "meet and combat
wrongs that injure "the safety and welfare of
people."

We adhere to our former opinion that Chapter 278, A
of 1937, is for the protection of the public health.
health of domestic animals of great economic value,
the prevention of nuisances on the highways. It does

directly or materially place a burden on interstate commerce, and the extent to which it affects commerce of that character may be said to be clearly incidental. We hold that until the Congress of the United States invades the field and legislates upon the subject, the act must be regarded as a proper and valid exercise of the inherent police power of the State of Indiana.

Rehearing denied.

Gerrit W. Clason v. State of Indiana, decided November 1, 1938, 17 N. E. (2d) 92.

The appellant was charged by affidavit with unlawfully transporting a dead animal, not slaughtered and intended for human food, over a highway of this state to a disposal plant located in Illinois, without being licensed as provided in Chapter 278, Acts 1937, Burns' Ann. St. 1933, 16-817 to 16-837 (pocket Supp.). Secs. 3901-1 to 3901-2 Baldwin's 1934 (1937 Supp.). There was a trial by the court, the evidence being stipulated, and the appellant was found guilty and fined. He has appealed, assigning that the affidavit upon which he was prosecuted did not charge a public offense and that the court erred in denying his motion in arrest and in denying him a new trial.

This is the second appeal of this cause, the former case being reported as State v. Clason, Ind. Supp. (1938), 12 N. E. (2d) 750, 13 N. E. (2d) 307. That appeal involved only the sufficiency of the charge. This court held the affidavit good and, on the authority of the former opinion, we now hold that there was no error in overruling appellant's motion to quash the affidavit filed subsequent to the first appeal.

It is conceded by the appellant that "insofar as this statute prescribes the kind of vehicles and the manner in which (but not the places to which) carcasses may be transported over the highways of this state, the statute appears to be within the scope of the police power; does not conflict with federal legislation; and bears a reasonable relation to the declared purpose of the enactment, viz., the limitation of the spread of disease, the protection of the public health, and the prevention of nuisances."

A number of propositions are presented and urged
support of the appellant's contentions, but we believe t
they may be fairly summarized as follows: That since
statute authorizes the transportation of carcasses of d
animals over the highways of the state but limits s
transportation to carriers of licensed operators of re
tion plants in this state, the effect of the statute is
prohibit interstate commerce of such dead animals in
lation of Article 1, Section 8, Clause 3 of the Constitu
of the United States. Appellant's position may be il
trated by this hypothetical situation: Since a pe
operating a vehicle constructed and equipped as requ
by the act, may obtain a license for its use in transpor
dead animals to a licensed reduction plant in Indiana,
may not employ a like vehicle, possessing the same s
tary features, to transport dead animals across the b
daries of this state, the statute must be construed
prohibitory and not merely as regulatory.

It is important, we think, to keep constantly in
the nature of the objects with which the statute d
That the carcasses of large animals not killed for hu
consumption are inherently dangerous to the public he
and liable to become nuisances, is clearly disclosed by
stipulation upon which the case was tried below. It
there shown that a majority of such animals die
contagious or infectious diseases, many of which
readily transmissible to human beings; that in the
of such dead animals decomposition starts within
hours after death, and that if such carcasses are not
posed of within twenty-four hours they will pro
noxious odors over a wide area; that contagious
infectious diseases may be communicated to man
beasts by the transportation of the bodies of such
animals upon the highways, but that the dangers inc
to such transportation may be minimized by the pr
cleansing and disinfecting of the vehicles employed
that purpose. It was further stipulated that there
now thirty-eight disposal plants in the State of Ind
licensed and operating under the act; that these plant
so distributed and equipped as to dispose of the bodi

large animals not intended and slaughtered for human food, as die within the limits of the state, and that the state of Indiana has a state veterinarian and facilities for the enforcement of the act. One provision of the statute provides that: "After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies." Acts 1937, Ch. 278, Sec. 11 (e), Burns' 1933, Sec. 16-827 (e) (Pocket Supp.) Sec. 3901-11 (e) Baldwin's May 1937 (Supp.).

It seems clear, therefore, that the statute under consideration is not dealing with an article of commerce as that term is ordinarily used and understood. And while it may be conceded that the bodies of dead animals have a commercial value, we do not think that it is to be doubted that the state of Indiana might, by appropriate legislation, have specifically provided that there should be no commerce in such bodies, but that the same should be destroyed without recompense to the owners thereof. In the case of City of Indianapolis v. Ryan (1937), 212 Ind. 447, 7 N. E. (2d) 974, this court held that it was within the proper function of the legislature to regulate the disposition of garbage and to provide for its destruction, notwithstanding its intrinsic value. We think it equally clear that it would be within the purview of our general assembly to prohibit the importation into this state of the carcasses of large dead animals not slaughtered for human consumption. In the case of Bowman v. Chicago & Northwestern Ry. Co. (1888), 125 U. S. 465, 8 S. Ct. 689, 1602, 31 L. Ed. 700, the Supreme Court of the United States made this observation relative to the powers of the state to impose quarantine provisions: "Doubtless the states have power to provide by law suitable measures

to prevent the introduction into the states of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of smallpox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution."

But one question remains, and that is whether the state, in the exercise of its police power, may prohibit the interstate transportation of dead animals by a plan that allows intrastate transportation by its licensees under such circumstances that may result in the profitable handling of such articles within the state. As we have already suggested, it is not to be doubted but that the state might have set up and operated its own disposal plants. If this had been done, the effect would have been to divest such dead bodies of every semblance of merchantable property. Instead of adopting this means of coping with the problem, the general assembly has authorized the plan embraced in the statute. It was apparently found that by licensing carriers and disposal plants, by-products might be salvaged sufficient to render the business profitable to the licensees, thereby relieving the state of the burden of dealing directly with the problem. The principles of constitutional law that protect interstate commerce are no more basic or sacred than those that protect private property from confiscation. It follows, *a fortiori*, that the inherent police power of the state, in dealing with a subject of this character, is sufficient to divest the carcasses of dead animals of their attributes of commerce. And it may be pointed out that if the statute under consideration was construed as severable in character, so that the regu-

latory features might be preserved, and interstate traffic permitted, as appellant contends, this construction might result in destroying the whole plan. If a substantial percentage of these carcasses were exported from the state through the operation of interstate commerce, those remaining within the state might be so reduced in quantity that it would no longer be profitable for licensees to operate their plants. The state would then be confronted with the problem of incurring great expense to dispose of those remaining, and this expense might well be increased by a reduction in the return from the by-products recoverable.

We have already quoted from a section of the act which requires that vehicles and the feet of draught animals used in transporting carcasses to the licensed disposal plants of the state, shall be thoroughly cleansed and disinfected after each delivery and before again going upon the highways of the state. It must be presumed that the state has ample facilities for the enforcement of this provision. If the transportation of dead animals from points within this state to places beyond its boundaries is to be permitted, it is conceivable that vehicles used for that purpose will spread disease in this state upon their return. It is no answer to this problem to say that the state might impose like standards for vehicles used in interstate transportation as are required by the terms of the act. The impracticability of adequate inspection would defeat the ends sought and would place upon the state veterinarian, or some other public agency, the burden of constantly policing every one of the many public highways leading into the state. The provisions of the act against interstate transportation may therefore be considered as in the nature of a quarantine against the bringing into this state of contaminated vehicles that have been used in the transportation of dead animals. We believe that such a quarantine is justifiable and reasonable: that it bears a direct relationship to the objectives sought by the act considered as a whole, and that any interference with interstate commerce is merely incidental.

The judgment of the Elkhart Circuit Court is affirmed.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 517.

GERRIT W. CLASON,
Appellant,

v.

STATE OF INDIANA,
Appellee.

Indianapolis, Indiana,
February —, 1939.

Receipt is this day acknowledged of three copies of the foregoing brief of the Appellee in the above case.

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.....
Attorneys for Gerrit W. Clason, Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 517.—October Term, 1938.

Gerrit W. Clason, Appellant, *vs.* The State of Indiana.	Appeal from the Supreme Court of the State of Indiana.

[March 27, 1939.]

Mr. Justice McReynolds delivered the opinion of the Court.

The Supreme Court of Indiana affirmed a judgment which convicted appellant of violating section eleven of the Animals Disposal Act approved March 12, 1937[1] (c. 278 Acts 1937) by transporting a dead horse over a highway of that State and into Illinois without license. Forbidden transportation is admitted; also that while license can be obtained under prescribed conditions for such transportation within the state it is prohibited for points outside.

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[1] Indiana Acts 1937, c. 278—

Sec. 4. (a) No person shall engage in this state in the business of operating a disposal plant, as herein defined, without first obtaining for each such disposal plant so operated by him, or in his behalf, a license and any vehicle certificates required, as herein provided; and no person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, shall either transport over any highways of this state, or dispose of to any person, the bodies of any dead animals in any manner herein prescribed, or in any other manner not permitted by law.

(b) The said state veterinarian shall keep a record of all applications for permits, licenses and vehicle certificates, showing all thereof issued, denied, or revoked by him, and such other facts as he may prescribe.

Sec. 11. (a) No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business.

(b) No license shall be issued to any person solely for the purpose of transporting the bodies of dead animals, but such transportation must be done solely by persons holding a license for disposal plants, so that such dead bodies may be properly and promptly disposed of under the requirements of this act; except that any public official of this state, charged by law with such duties, may remove or supervise the removal of any such dead bodies and the disposal thereof by any method provided for by this act where necessary to protect the public health and welfare.

(c) All vehicles used in the transportation of the bodies of dead animals, under the provisions of this act, shall have a tank or metal lining in the bed of such vehicle, or be otherwise so constructed that the same shall be prac-

Section eleven is a part of a comprehensive statute which requires, and undertakes to regulate, the prompt disposition of large dead animals (not slaughtered for human food) under the general supervision of the State Veterinarian. The obvious purpose of the enactment is to prevent the spread of disease and the development of nuisances.

The prescribed plan exacts that within twenty-four hours after death owners shall bury or burn such bodies on their premises, or there deliver them to the representative of a disposal plant licensed to do business within the State. It further directs that the body shall be promptly carried to such plant in a sanitary vehicle and speedily rendered innocuous. The conveyance must be thoroughly and promptly disinfected at the plant.

The validity of the statute was unsuccessfully challenged on the ground that it unduly discriminates against and burdens interstate commerce and thereby violates the Federal Constitution. The Supreme Court of the State reviewed the statute; pointed out its purpose to suppress obvious danger to public health; referred to the means adopted as reasonably appropriate to that end; quoted from *Bowman* v. *Chicago and Northwestern Railway Co.* (125 U. S.

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tically watertight, so that no drippings or seeping from such dead bodies shall escape from such vehicles where this can be obviated; and all vehicles must have an end-gate constructed or lined with the same materials, and hinged at the bottom and fastened firmly at the top when closed and so designed, so far as practical, that drippings and seepings shall not escape from such part of said vehicle while engaged in such transportation; and every such vehicle shall have a bed of such depth and type of construction and equipment that any dead body or bodies therein shall be completely hidden from view of persons using the highways and any public nuisance obviated while being transported.

(d) The state veterinarian may prescribe specific and also additional requirements, not inconsistent with the provisions and purposes of this act, governing and regulating such transportation and the construction, equipment, maintenance and operation of such vehicles.

(e) After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies.

(f) Vehicles, when loaded with the body of an animal which has died of disease, shall be driven directly to the place of disposal, except that the driver may stop on the highway for other like dead bodies, but he shall not drive upon the premises of any person unless he first obtains the permission of such person and he shall avoid creating any nuisance during such transportation and in the event any drippings or seepage should escape from such vehicle, to his knowledge, he shall clean up the same and remedy such escape, if possible to do so.

5, 489).[2] It concluded that dead bodies of animals not slaughtered r food are not legitimate subjects of commerce; that the statute an appropriate sanitary measure whose effect upon interstate mmerce, if any, is merely incidental.

As the precise point for our determination, counsel for appellant ubmit the following—

"The Supreme Court of Indiana erred in holding that the Indiana Dead Animal Disposal Act of 1937 was valid as a reasonable egulation or quarantine and not invalid as a discriminatory prohibition of interstate commerce in commodities recognized as legitiate articles of intrastate commerce, contrary to Article I, Section , Clause 3, of the Constitution of the United States."

It seems plain enough that the challenged statute is a sanitary nd health measure not intended to cause discrimination against or o burden interstate commerce. Its purpose is to promote the ealth of the people of the State in feasible ways.

"The power of the State to prescribe regulations which shall prevent the production within its borders of impure foods, unfit for se, and such articles as would spread disease and pestilence, is well stablished. Such articles, it has been declared by this court, are ot the legitimate subject of trade or commerce, nor within the protection of the commerce clause of the Constitution. . . . Nor loes it make any difference that such regulations incidentally affect nterstate commerce, when the object of the regulation is not to hat end, but is a legitimate attempt to protect the people of the State." *Sligh* v. *Kirkwood*, 237 U. S. 52, 59-60.

Here, contrary to what seems to be the insistence of counsel, the State has not recognized dead horses as legitimate articles of intrastate commerce. It permits them to be sold only to licensed operators who must transport them immediately under strict sanitary regulations for prompt delivery to a licensed plant there to be

2 "Doubtless the States have power to provide by law suitable measures to prevent the introduction into the States of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of small-pox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution." Bowman v. Chicago &c. Railway Co., 125 U. S. 465, 489.

rendered innocuous without delay by prescribed methods. A this is part of a workable scheme to secure prompt removal of d caying carcasses and thus protect against obvious evils.

We can find no substantial basis for the charge of discriminatio against legitimate interstate commerce. That any real burden upo commerce which the State is not free to inhibit will result from th challenged statute seems impossible.

There is no suggestion of conflict with a federal enactment. Th mere power of the Federal Government to regulate interstate com merce does not disable the States from adopting reasonable measur designed to secure the health and comfort of their people. The sta ute under consideration is an effort to discharge an obligation t the public; the means adopted we think are clearly appropriate t this lawful end.

The judgment of the court below must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.